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Supreme Court of the United States

Fall Term, 1950

No. 243

WILLIAM E. EVANS, PETITIONER,

versus

WYNDHAM M. MANNING, RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA AND BRIEF IN SUPPORT THEREOF

WILLIAM E. EVANS,
Pro se.

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

To the Honorable Supreme Court of the United States:

The Petition of William E. Evans respectfully shows to the Court:

A. Summary Statement of Matter Involved.

This is a petition for a writ of *certiorari* directed to the Supreme Court of the State of South Carolina to review a judgment of that Court in this case filed on May 1, 1950, Case No. 3235, Opinion No. 16351.

The judgment reversed an Order of the Richland County Court, Legare Bates, J., which said Order released the petitioner from the Penitentiary of the State of South Carolina.

The Petitioner, William E. Evans, was indicted for and found guilty of violating Sec. 1112 of the Criminal Code (procuring an abortion resulting in death) in the Court of Federal Sessions at Spartanburg on July 31, 1942. On the same date the Honorable T. S. Sease, Presiding Judge, imposed upon Petitioner a sentence of twelve (12) years confinement upon the public works of Spartanburg County or in the State Penitentiary. An appeal was subsequently taken and the judgment of the lower Court affirmed. *State v. Evans,* 202 S. C. 463, 25 S. E. (2d) 492.

Upon filing of the Remittitur affirming his conviction, the Petitioner began service of his sentence in the State Penitentiary on May 12, 1943. With deduction for good conduct, service of sentence would be completed October 6, 1951.

Thereafter, on December 20, 1945, the Honorable Ransome J. Williams, who was then Governor, authorized the Superintendent of the Penitentiary to release Petitioner, in order that he might visit his sick mother, for the period December 20, 1945, to January 3, 1946.

On January 2, 1946, Governor Williams authorized the release of the Petitioner until the Probation and Parole Board could make a final investigation of his case and report to the Pardon Board.

Thereafter, upon assuming the office of Governor, the Honorable J. Strom Thurmond, by letter of May 20, 1947, revoked all leaves of absence which were outstanding on the date he took office as Governor. Pursuant to this revocation and the publicity attendant thereon, the Petitioner voluntarily returned to the Penitentiary on May 27, 1947, for the purpose of serving the balance of his sentence.

On August 3, 1948, Petitioner presented before the Honorable Legare Bates, Judge of the Richland County

Court, a Petition for a Writ of *Habeas Corpus,* alleging the unlawful confinement of the Petitioner by the Respondent.

Upon issuance of the Writ, Respondent made return to the Petition, setting up certain defenses, including lack of jurisdiction in the Richland County Court. The matter was heard on oral argument and affidavits.

By Order dated September 27, 1948, the Honorable Legare Bates ordered the release of the Petitioner. (T. R. pp. 8-15.)

In due time, Respondent served upon Petitioner, Notice of Intention to Appeal and made application for an Order staying the execution of the Order of Honorable Legare Bates.

Judge Bates held, among other things (T. R. p. 14, Folio 55): "In view of the foregoing, which is to my mind convincing, the only possible conclusion that I can reach is that the Petitioner should not have been reincarcerated until the conditions mentioned in the aforesaid leave of absence had been complied with, and in this connection I am also reminded by the fact that the Petitioner is in no wise at fault, nor was there anything the Petitioner could have done, because said conditions were not imposed upon him. I, therefore, hold and conclude that the Petitioner is at this time being illegally restrained of his liberty and that he is entitled to have his *status quo* restored to the same effect as though he had not been reincarcerated."

The Court held (*Evans v. Manning,* 59 S. E. (2d) 341):

Where Governor authorized petitioner's release until probation and parole board could make final investigation of case to be presented to Pardon Board at its next meeting, but no final investigation was ever made or parole granted, and thereafter party who succeeded as Governor revoked

all leaves of absence, petitioner was not entitled to an equitable parole. Code 1942, 165, 170, 3437; Act March 28, 1946, 44 St. at Large, p. 1516.

Where on January 2, 1946, Governor authorized petitioner's release from penitentiary until probation and parole board can make final investigation of case, to be presented to pardon board at its next meeting, but no final investigation was ever made and terms of office of members of board of pardons terminated as of July 1, 1946, and party who succeeded as Governor revoked all leaves of absence, petitioner's leave was terminated and he properly surrendered himself to authorities at penitentiary and was lawfully detained. Code 1942, 165, 170, 3437; Act March 28, 1946, 44 St. at Large, p. 1516.

B. Basis of the Court's Jurisdiction.

It is competent for this Court to require by *certiorari* that this case be certified to it for determination pursuant to Act of June 25, 1948, c. 646, 62 Stat. 929; Title 28, Sec. 1254, par. (3), United States Code.

C. Question Presented.

Did the Supreme Court of the State of South Carolina err in holding that one Department of Government could ignore the order of the Governor to make an investigation upon which to base the granting to petitioner of a parole; *i. e.*, could the Pardon Board, by refusing to obey the Governor's order, prevent the petitioner from gaining his liberty?

D. Reasons Relied on for the Allowance of Writ.

With respect to the question here presented, the Supreme Court of the State of South Carolina granted a Decision in violation of petitioner's rights under the Constitution of the State of South Carolina and the Constitution of the United States. The State Constitution provides in

Article I, Section 5: "Privileges and immunities—protection of laws—The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws."

The Federal Constitution says in Section I, of the XIV Amendment: "* * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Thus, for practical purposes, the provisions are the same in both Constitutions.

A federal question was presented in the Lower Court, that is, the petitioner being unlawfully restrained of his liberty, and the petitioner here seeks review in this Court on the ground that he has been denied due process under the XIV Amendment of the Constitution of the United States.

In reversing the order of the Lower Court, the Supreme Court of South Carolina has violated the immunity guaranteed by the Constitution of the State of South Carolina and the Constitution of the United States of America.

Respectfully submitted,

WILLIAM E. EVANS,
Pro se.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

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Supreme Court of the United States

Fall Term, 1950

No.....

WILLIAM E. EVANS, PETITIONER,

versus

WYNDHAM M. MANNING, RESPONDENT

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

OPINION BELOW

The Order of the Court below is found at 8-15 of the Transcript of Record, ff. 31-15. The Opinion of the Supreme Court of the State of South Carolina is to be found in 59 S. E. (2d) Page 341. Certified copies of the Decision below have been forwarded with the Transcript of Record.

GROUND OF JURISDICTION

This Honorable Court has jurisdiction of the case pursuant to Act of June 25, 1948, C. 646, 62 Stat. 929; Title 28, Sec. 1254, par. (3), United States Code.

ERROR TO BE URGED

The Supreme Court of the State of South Carolina erred in reversing the judgment of the Lower Court and refusing to affirm judgment for the petitioner on the ground that the petitioner was prejudiced because the Pardon Board refused to obey the plain order of the Governor, or without even attempting to obey said order, thereby depriving petitioner of a substantial legal and Constitutional right.

SUMMARY OF ARGUMENT

No effort was made by the Probation and Parole Board to investigate the case as required by law and it was never presented to the Board of Pardons. At the time of the Governor's Order (January 2, 1946), the Board of Pardons was functioning and continued to function until it was terminated as of July 1, 1946. Petitioner contends that the respondent was estopped by the failure of the Probation and Parole Board and the Pardon Board to comply with the Order of Governor Williams.

ARGUMENT

Was Governor Thurmond estopped to cancel the leave of absence granted by Governor Williams to the inmate "until the Probation and Parole Board can make a final investigation of this case", where no such investigation was made?

(a) Was Petitioner included in the persons mentioned in the matter of Governor Thurmond to Colonel Manning, dated May 20, 1947 (Folio 16)?

(b) Could Governor Thurmond revoke the lawful order of his predecessor requiring a final investigation to be made, Etc.?

In the consideration of this question, it is important to keep in mind that we are dealing with the actions of two

Governors who had co-equal plenary power, at the time in which each acted, Governor Williams, at the time he granted the Conditional Leave to Petitioner, had the power to even pardon Petitioner, and thought he had done so, he being the then Chief Magistrate of the State and his act was in accordance with Law. Governor Thurmond, at the time he revoked the act of Governor Williams, was the Chief Magistrate with the same plenary power, but such plenary power could not affect Petitioner who was at liberty under the lawful mandate of his predecessor which contained a condition. Transcript of Record (Folios 14-16) letter of Governor Williams to Colonel Ashley:

"This is your authority to release William E. Evans until the Probation and Parole Board can make a final investigation of this case to be presented to the Pardon Board at its next meeting." Also, letter of Governor Thurmond to Colonel Manning: "If there are any persons sentenced to the Penitentiary who have not been properly discharged according to law and are not now confined to the Penitentiary you will immediately furnish the names to the Chief of the South Carolina Law Enforcement Division who will in turn have them taken into custody at once and turned over to you to serve the remainder of their sentences." (Emphasis added.)

Governor Thurmond ordered Colonel Manning to reincarcerate "persons who have not been properly discharged according to law". Petitioner respectfully submits that Governor Thurmond's order had no application to him because he was lawfully at liberty until the conditions named in Governor Williams' order had been carried out. Governor Thurmond had no authority or power to revoke the lawful order of Governor Williams. Learned counsel for Appellant says, (Folios 37-38):

"Applying this rule to the situation here presented and with especial reference to the fact that the Governor of the State has been held estopped of an alleged lack of knowledge of certain facts, it is clear that a Chief Executive will not be limited and curtailed in the performance of his duties by reason of an act of grace granted by a former Governor.

The Court below stated: '* * * had he (Governor Thurmond) been apprised of the condition or nature of this leave of absence, he would not have cancelled the Petitioner's leave of absence granted by Governor Williams.' (Folio 54.)

This conclusion can only be based upon mere speculation. It cannot be presumed that Governor Thurmond was unaware of the facts and circumstances when he ordered the Petitioner re-committed to the State Penitentiary."

It is, therefore, further, respectfully submitted that the conclusions of the County Judge were not based on "mere speculation" as there could be no other reasonable conclusion. Governor Thurmond issued a "Blanket" Revocation, evidently not realizing that Petitioner was then lawfully at liberty, at least he did not take the time or go to the trouble of ascertaining the status of "any persons sentenced to the Penitentiary". For the foregoing reasons alone, Petitioner contends that the judgment below should be affirmed.

Appellant says:

"A sovereign state is not subject to an estoppel to the same extent as an individual or a private corporation. Otherwise, it might be rendered helpless to assert its powers in government. The doctrine of estoppel is not applied to the extent of impairing sovereign powers of a state. * * *"

The case of *Powell v. Board,* 210 S. C. 136; 41 S. E. 780, holds exactly to the opposite, to wit: "It has been

broadly stated that there can be no estoppel against the United States or a state. Nevertheless, subject to limitations and exceptions * * * it is well established that in a 'proper case' the doctrine of equitable estoppel may apply as against the federal and state governments, and that under circumstances which would estop a private individual an estoppel may be asserted against the United States, a state, or a state agency, commission, or officer." (Emphasis added.)

* * *

"Ordinarily estoppel has been held applicable against the public only when the conduct or representations of the officers or agents giving rise to it are within their authority as such officers or agents." (Emphasis added.)

By giving due respect for the lawful order of a predecessor in no wise renders the state helpless to assert its powers of Government; in fact, the law as stated in *Crooks v. Sanders,* 123 S. C. 28; 115 S. E. 760, holds the sovereign is not above the citizen and that the citizen's rights come first.

"Neither can it be doubted that under the broad power 'to grant reprieves, commutations and pardons after conviction (except in cases of impeachment), in such manner, on such terms and under such restrictions as he shall think proper' (Const. 1895, Art. 4, Par. 11), the Governor may, if he sees fit, exercise executive clemency in the nature of a conditional pardon that does not have the effect of suspending or holding in abeyance the convict's sentence. Concretely, it was entirely within the scope of Governor Cooper's pardoning power, as conferred by the Constitution, to grant Grover Crooks such a permit to go at liberty as would run concurrently with and not suspend his sentence. May the 'parole during his good behavior' issued by the Governor on December 22, 1921, be reasonably and

legitimately so construed? While the object of the Courts in construing instruments of this character is to carry out the intention of the parties, wherever that is doubtful the grant is construed most beneficially for the citizen and most strongly against the Sovereign power. As a pardon is an act of grace, it is a universal rule of interpretation that limitations upon the operation of such a grant of clemency should be strictly construed. 20 R. C. L., p. 547, Par. 29; *Lee v. Murphy,* 22 Grat. (Va.), 789, 12 Am. Rep., 563; *Osborn v. U. S.,* 91 U. S. 474; 23 L. Ed. 388."

Of course, we are not dealing with a pardon in this case. However, the leave of absence was in the nature of at least a temporary pardon with conditions attached. Appellant does not question the legality of the leave of absence, nor does appellant attack the power of Governor Williams to grant it when he was Governor. It is to be noted that this temporary conditional leave of absence placed no duty for any action of any kind to be taken by Petitioner and if those in authority who were ordered to make the investigation failed in their duty, it certainly should not be charged against the Petitioner. In conclusion, Petitioner believes that the lower court was right both as to jurisdiction and as to the holding that Petitioner could not be legally reincarcerated until the conditions imposed in the Order of Governor Williams had been fully complied with, and, further, Petitioner urges that, under a proper consideration of Governor Thurmond's Order (Folio 16) that he was "not included as one who had not been properly discharged according to law".

All of which is respectfully submitted,

WILLIAM E. EVANS,
Pro se.

FILED
OCT 28 1950
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 243

WILLIAM E. EVANS,

Petitioner,

vs.

WYNDHAM M. MANNING,

Respondent

PETITION FOR REHEARING OF WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA.

To the Supreme Court of the United States:

Your petitioner above named respectfully hereby petitions for a re-hearing of the petition heretofore filed in this Honorable Court for a Writ of Certiorari to the Supreme Court of the State of South Carolina, as provided in Section 2 of Rule 33 of this Honorable Court, upon the following grounds, which your petitioner is informed and believes are substantial grounds and are available to petitioner although not previously presented by your petitioner, to wit:

That the Supreme Court of the State of South Carolina, in its opinion heretofore filed with the original petition herein, held, "After the Board of Pardons was abolished,

it was no longer possible to carry out the plan contemplated by the Governor in his letter of January 2nd. It was certainly not the intention of Governor Williams that the non-action of the two boards mentioned in this letter should have the effect of giving petitioner an indefinite leave of absence which could not be revoked by him or his successor", it appearing by said holding that the State of South Carolina was not bound by the actions of its agents and servants who had been ordered by the Chief Magistrate of the State to perform certain duties and that the non-performance of said duties was prejudicial to the rights and interests of your petitioner and constituted a direct violation of his constitutional rights under the Constitution of the United States and the State of South Carolina.

Respectfully submitted,

WILLIAM E. EVANS,
Petitioner, Pro se.

Personally appeared William E. Evans, who on oath says:

That he has read the foregoing Petition and that the allegations therein contained are true to the best of his knowledge, information and belief.

WILLIAM E. EVANS,
Petitioner, Pro se.

Sworn to before me on this 20th day of October, 1950.

A. W. HOLMAN (L. S.),
[SEAL.] *Notary Public for S. C.*

Certificate

William E. Evans, in his own person, certifies that the foregoing Petition is presented in good faith and not for delay, to the best of his knowledge, information and belief; and that said Petition is restricted to the grounds above specified.

WILLIAM E. EVANS,
Petitioner, Pro se.